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Message Text

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PAGE 01 STATE 177375
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FM SECSTATE WASHDC
TO AMEMBASSY MANILA PRIORITY

C O N F I D E N T I A L STATE 177375

E.O. 11652: GDS

TAGS: CGEN

SUBJECT: JUDICIAL ASSISTANCE: SERVICE UNDER FOREIGN
SOVEREIGN IMMUNITIES ACT: TOMANEK V. REPUBLIC
OF PHILIPPINES ET AL

REF: A) MANILA 11532; B) 78 STATE A-2073

1. DEPT FORWARDED SUMMONS, COMPLAINT AND NOTICE OF SUIT IN CAPTIONED CASE TO EMBASSY PURSUANT TO 28 USC 1608 (A) (4) SINCE WE WERE ADVISED THAT ALTHOUGH SERVICE WAS ATTEMPTED UNDER 1608 (A) (3), IT WAS NOT EFFECTED, BECAUSE NO REGISTERED RECEIPT WAS FORTHCOMING FROM THE MINISTRY OF FOREIGN AFFAIRS. ATTORNEY HANDLING CASE TRIED TO TRACK DOWN REGISTERED PACKAGE CONTAINING DOCUMENTS BUT WAS UNABLE TO TRACE THE PACKAGE AFTER IT LEFT THE UNITED STATES. IT MAY OR MAY NOT HAVE BEEN RECEIVED BY PHILIPPINE MFA. VARIOUS INDIVIDUALS COULD BE INQUIRING ABOUT THE FOREIGN SOVEREIGN IMMUNITIES ACT BECAUSE THERE ARE MULTIPLE DEFENDANTS. ALSO, ALTHOUGH ALL DEFENDANTS HAVE NOT BEEN

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 STATE 177375

FORMALLY SERVED, THEY MAY KNOW THAT THEY ARE POTENTIAL DEFENDANTS AND SO ARE INQUIRING INTO THE LAW ON THE SUBJECT.

2. THERE IS A PROCEDURE AVAILABLE TO DEPT SET FORTH IN 22 CFR 93 (C) (2) WHEREBY DEPT CAN IF IT DEEMS IT APPROPRIATE

FORWARD SUMMONS, COMPLAINT AND NOTICE OF SUIT TO

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

PHILIPPINE EMBASSY IN WASHINGTON. DEPT ACCEPTS EMBASSY'S EVALUATION THAT THIS PARTICULAR CASE MAY BE A SENSITIVE CASE FOR THE REASONS SPECIFIED IN THE LATTER PART OF PARA 3 REFTEL . ACCORDINGLY WE WILL FORWARD DOCUMENTS TO EMBASSY PHILIPPINES HERE AS REQUESTED IN THIS PARTICULAR CASE ONLY. WE DO NOT THINK THAT HISTORICAL PRACTICE OF MFA SERVING AMEMBASSY IN PHILIPPINES IS SUFFICIENT IN AND OF ITSELF TO WARRANT CHANGE IN GENERAL ADMINISTRATIVE PROCEDURE. IF IN A FUTURE CASE NOT INVOLVING SENSITIVE ISSUES THE PHILIPPINE AUTHORITIES OBJECT TO EMBASSY FORWARDING DOCUMENTS TO MFA, THAT WOULD BE SUFFICIENT TO ESTABLISH A PRECEDENT.

3. IN ADDITION, UNDER 28 USC 1608 (A) (4) SERVICE IS EFFECTIVE ON THE DATE THE NOTE IS SENT. UNDER UNITED STATES LAW A DEFENDANT MUST FILE AN ANSWER TO THE COM-PLAINT OR SOME OTHER RESPONSIVE PLEADING WITHIN 60 DAYS OF THE DATE OF SERVICE. IF WE WERE TO SERVE THE PHILIPPINE EMBASSY HERE THERE MIGHT BE A DELAY OF DAYS OR EVEN WEEKS BEFORE THE COMPLAINT COULD BE BROUGHT BEFORE THE APPROPRIATE AUTHORITIES IN THE PHILIPPINES. IN SHORT, WE THINK IT IS TO THE ADVANTAGE OF THE PHILIPPINE AUTHORITIES IF WE SERVE THEM THROUGH THE EMBASSY IN THE PHILIPPINES.

4. ACTION REQUESTED: IN THIS PARTICULAR CASE, SINCE CONFIDENTIAL

CONFIDENTIAL

PAGE 03 STATE 177375

THERE ARE SENSITIVE ISSUES INVOLVED, PLEASE FORWARD ALL DOCUMENTS BACK TO DEPARTMENT, ATTN: SCS. INASMUCH AS ATTORNEY LITIGATING CASE IS VERY ANXIOUS TO HAVE DEFENDANT GOVERNMENT OF PHILIPPINES SERVED, EMBASSY'S EXPEDITIOUS ATTENTION REQUESTED. CHRISTOPHER

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Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

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20 Mar 2014
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